



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

ANNUAL LITIGATION TRENDS ANALYSIS REPORT: 01 APRIL 2010 UNTIL 31 MARCH 2011

EXECUTIVE SUMMARY

This litigation trends analysis report covers the period 01 April 2010 to 31 March 2011 on motion applications, claims sounding in money and litigation relating to arbitrations instituted for or against DCS. It also covers legal opinions requested and provided by Legal Services. It is aimed at identifying the cause of litigation and preventative mechanisms.

The scope covered by this exercise extends to all regional offices. In this report, it is pointed out that the litigation data is collected manually and captured into the electronic database. Graphs and statistics tables were used to illustrate the rate of occurrence in litigation in respect of each region. The percentages per categories of alleged transgressions are intended to indicate whether there is a decline or increase of reported litigations. Most of these are based on contingency claims. See Annexure being the approved financial statements for the same period.

Most of litigation cases take place at regional offices as opposed to Head Office. The litigation trends analysis report (Annexure) is enclosed for easy reference. During the period 01 April 2010 to 31 March 2011, the Head Office received a total number of 137 claims compared to 96 of the 2009-2010 financial year. The total amount of R 34,794,722.71 being claimed and a total of R 85,753,925.09 in claims from 2004-2005 financial year prescribed as letters of demands were received, but further action was not taken.

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There are 471 arbitration cases received and registered by Director Legal Services both in head office and in the regions compared to 306 of the 2009/2010 financial year.

There are 307 motion applications received from 1 April 2010 to 31 March 2011, compared to the 434 registered in the 2009/2010 financial.

The analysis of the database revealed that there is an increase in the number of both the arbitrations and motion applications over the past two financial years. Most litigation cases relate to parole matters, unfair labour practice, unfair dismissal and motor vehicle collision claims.

The proposed interventions made in this report are pivotal to reduce the number of claims, motions and arbitrations against the department.

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1. THE REPORT

1.1 Methodology and Background Information

The litigation data is collected manually. The litigation data covers motion applications; claims and arbitrations. The word "claims" refers to legal proceedings where Plaintiffs sought Orders of Court requiring the Department to pay a sum of money. In some cases, the quanta of the amount claimed were also a subject of a dispute and the Court had to make a determination.

The motion applications, on the other hand were legal proceedings requesting a Court of Law to order the Department to either do or perform a specific conduct or refrain from doing a specific conduct. The examples of those conducts include the following:

- (a) A Court Order directing the Department to place an offender on parole subject to conditions set by the Correctional Services Parole Board or by the Court.
- (b) An order setting aside an interdict which was originally granted as a *rule nisi*.
- (c) An order compelling the Department to reinstate an employee who had been dismissed.
- (d) An order compelling the Department to pay arrear salary to an employee following his or her reinstatement because his/her dismissal was either substantively or procedurally unfair or was not procedurally fair.
- (e) Any other order compelling the Department to perform a specific act.

A claim, on the other hand, is usually sounding in money. The Department is

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required to pay for damage caused by its officials. The examples of these are motor vehicle accidents that were caused by the negligence or reckless driving by drivers employed by the Department during the course of their employment.

An arbitration award, on the other hand, includes a relief granted in favour or against an employee. Most of such arbitration awards relate to reinstatement of dismissed officials; unfair labour practice of different forms and interpretation of resolutions.

1.2 Purpose of the Report

The overall purpose of the report is to advise Senior Management of the Department on the major causes of litigation cases facing the Department and to propose the intervention required in order to reduce or eliminate the causes of litigation.

1.3 Integrity of the manual data

The manual data was supplied to the Directorate: Legal Services by the Regional Coordinators for Legal Services from the six Regional offices of the Department. The Legal Administration Officers at Head Office supplied the litigation data on cases registered and managed at Head Office.

**1.4 Total number of litigation cases registered between the periods
01 April 2010 to 31 March 2011.**

01 APRIL 2009 – 31 March 2010

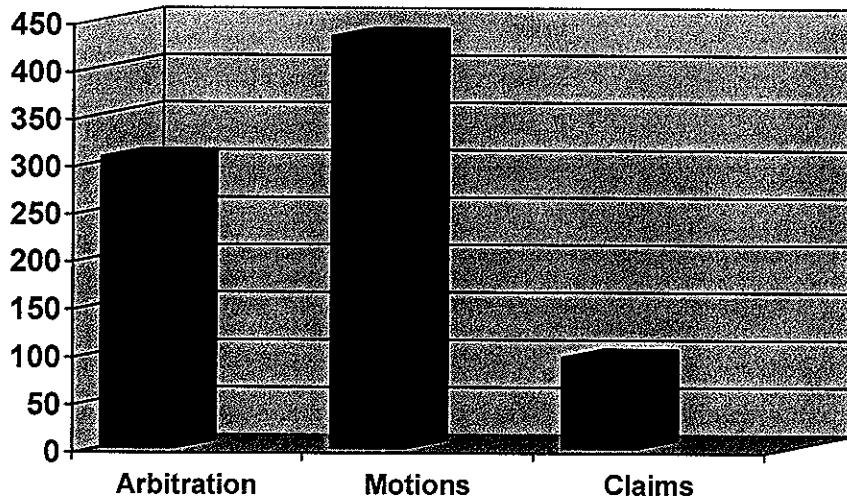
SUBJECT MATTER	NO.
1. Claims	96
2. Arbitrations	306
3. Motions	434
Total	841

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01 APRIL 2010 - 31 MARCH 2011

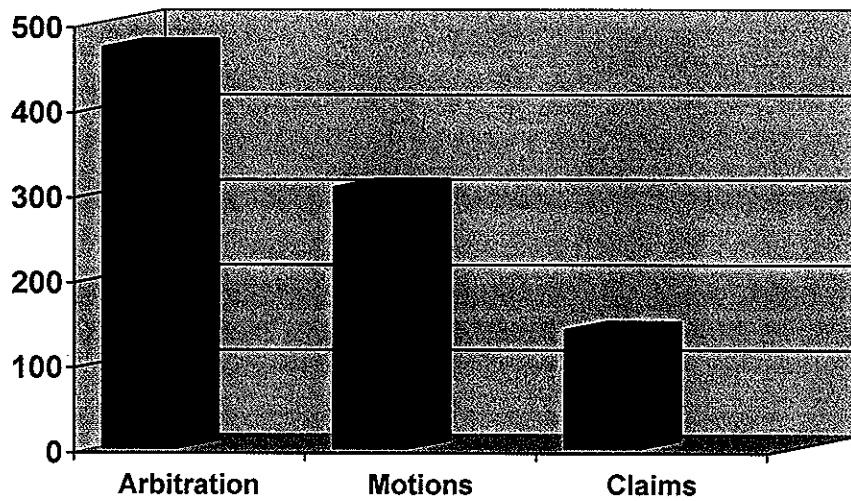
SUBJECT MATTER	NO.
1. Claims	137
2. Arbitrations	471
3. Motions	307
Total	915

- 1.5** The graph below represent litigations statistic for the period 01 April 2009 to 30 March 2010. Claims = 96: Arbitrations = 306: Motions = 434



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- 1.6 The graph below represent litigations statistic for the period 01 April 2010 to 31 March 2011. Claims = 137 : Arbitrations = 471: Motions = 307.

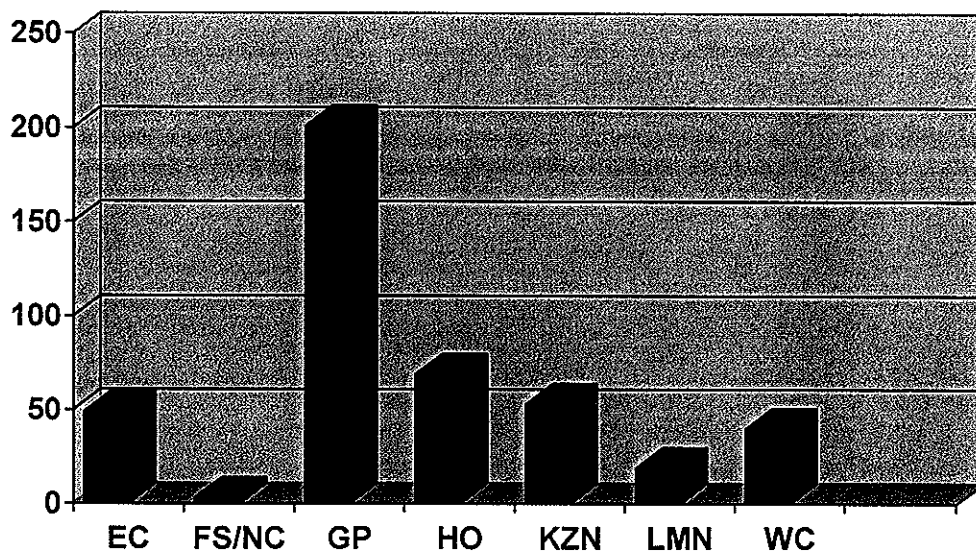


2. **MOTION APPLICATIONS REGISTERED DURING THE PERIOD 01 APRIL
2010 – 31 March 2011**

MOTIONS

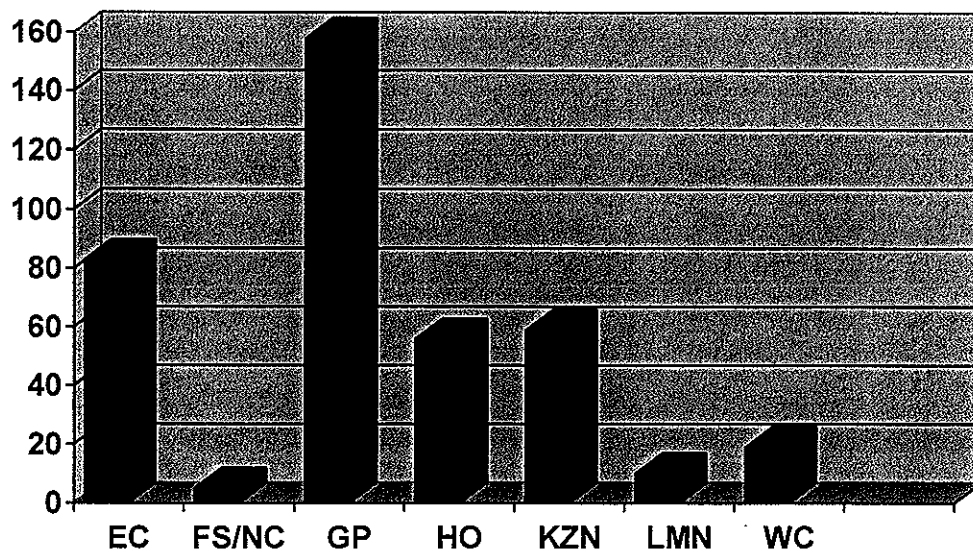
Figure: 4.1.1 period: 01 April 2009 to 30 March 2010

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MOTIONS

Figure: 4.1.1 period: 01 April 2010 to 31 March 2011



2.1 For the period 01 April 2010 to 31 March 2011, 307 motion applications were registered. These figures are indicated per Region as set out above. The figures for the 2009/2010 financial year are also indicated in the first graph for co imperative analysis.

2.2 **Summary of Motions**

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- (a) It is clear that motion applications involving parole matters are still the most common in the Department. The offenders often allege that they should be placed on parole because they are eligible for placement on parole. Other motion applications are also registered.

- (b) The motion applications were as indicated below.

<u>APRIL 2009 /MARCH 2010</u>	<u>APRIL 2010 / MARCH 2011</u>
▪ EC- 49	EC - 83
▪ FS/NC-03	FS/NC - 05
▪ GP-201	GP - 158
▪ HO- 69	HO- 56
▪ KZN- 53	KZN - 59
▪ LMN-19	LMN - 10
▪ WC-40	WC - 19

2.3 CONCLUDING REMARKS ON MOTION APPLICATIONS

- (a) The dilemma facing the Department is that most motion applications are lodged as urgent applications. This may prejudice the Department in that the process of consultation and filing of opposing affidavits is not done in terms of Rules of Court. Postponements are requested and at times are refused.
- (b) The lack of legal capacity in the Regional Offices and the vacant Legal Services posts at Head Office were a problem in that there was no capacity to provide the required services.

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(c) The most common motion applications include the following:

- (i) Applications for placement on parole;
- (ii) Application to make arbitration awards Orders of Court.
- (iii) Applications for access to information.

3. CLAIMS

3.1 For the period 01 April 2010 to 31 March 2011, a number of claims have increased from 96 for 2009 – 2010 to 137.

TOTAL CLAIMED AMOUNT PER REGION

- EC = R 20,508,293.52
- LMN = R 1,765,171.45
- FS/NC = R 710,534.76
- WC = R 5,773,068.83
- KZN = R 2,884,312.38
- GP = R 3,174,602.71

Total amount of claims for 2010/2011 financial year was R 34,794,722.71 compared to the 2009/2010 financial year claims for R 116,351,589.90

3.2 The claims are classified into the following categories and were made as indicated in the table below

SUBJECT MATTER	TOTAL NUMBER	TOTAL CLAIM	TOTAL PAID
Assault	43	R 7,255,000.00	

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SUBJECT MATTER	TOTAL NUMBER	TOTAL CLAIM	TOTAL PAID
Unlawful detention	10	R 7,416,900.00	
Motor Vehicle Accidents	35	R 1,941,542.19	
Medical treatment	1	R 500,000.00	
Pain and suffering	4	R 1,860,000.00	
Breach of contract	3	R 29,129.58	
Breach of duty to care	1	R 690,000.00	
Damages to private property	3	R 86,475.50	
Unfair labour Practice	1	R 10,000,000.00	
Damages	2	R 650,000.00	
Defamation	3	R 500,000.00	
Transfer: Refusal by Prisoners	23	R 575,000.00	
Negligence of human rights	1	R 200,000.00	
Psychological Damages	1	R 1,500,000.00	
Rape	2	R 370,000.00	
Sexual Harrasment	1	R 560,076.00	
Unlawfull deduction	3	R 250,599.44	
Total	137	R 34,794,722.71	R0.00

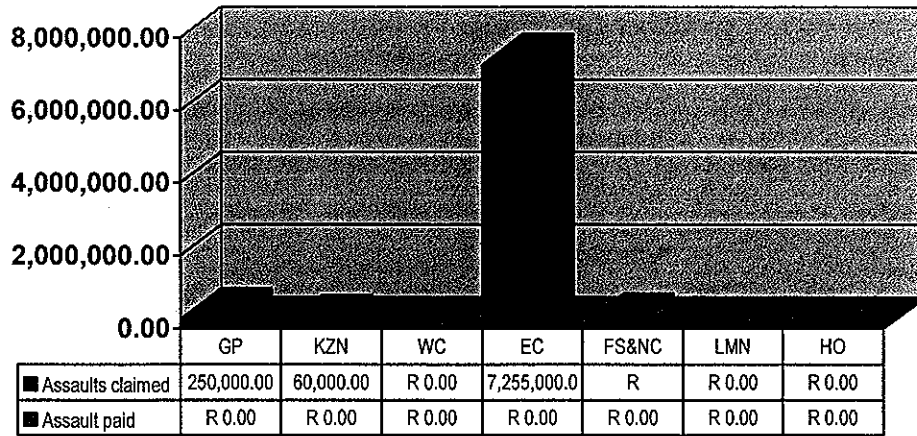
3.3 From the table above (3.2) it is clear that the highest number of claims relates to alleged assault followed by motor accidents, procurement irregularities, unlawful detention and pain and suffering.

3.4 The evaluation of above clearly indicates that alleged negligence by department's officials play an important role in the causes of claims relating to motor vehicle accidents.

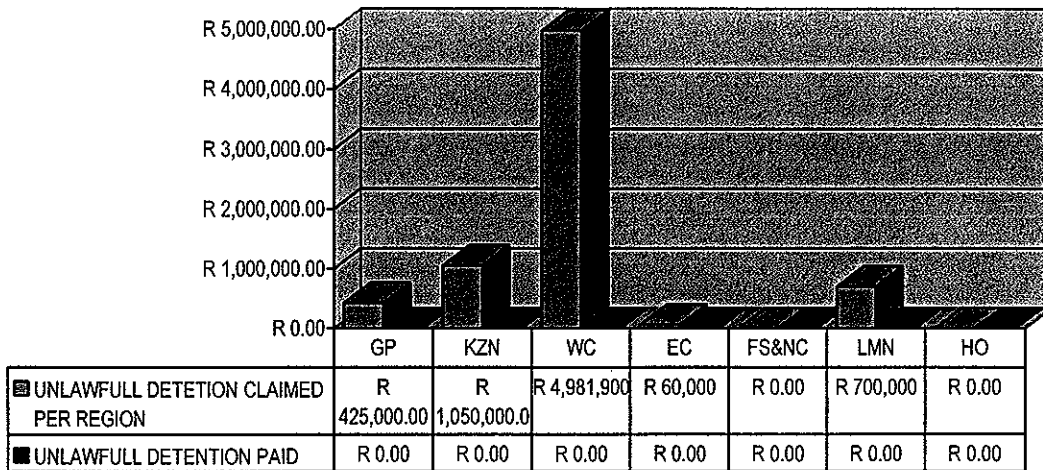
3.5 THE FOLLOWING GRAPHS INDICATES TOTAL CLAIMS RECEIVED PER REGION

3.5.1 Assaults per region: April 2010 to March 2011

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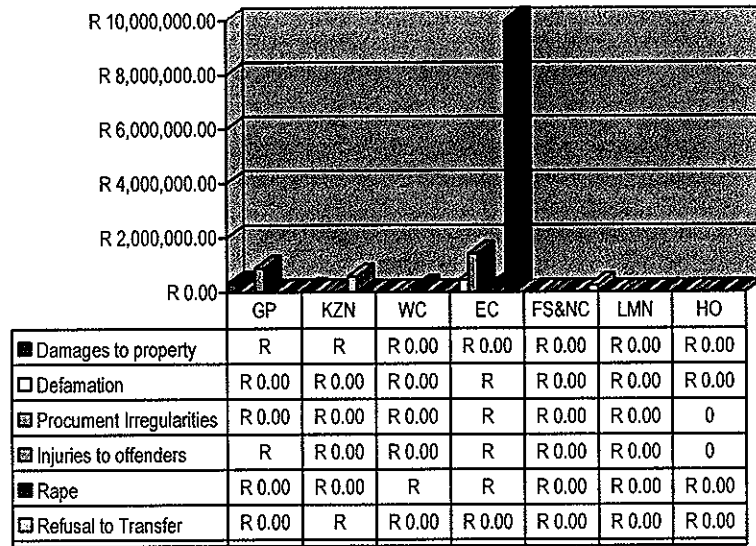
3.5.2 Unlawful Detention per region: April 2010 to March 2011



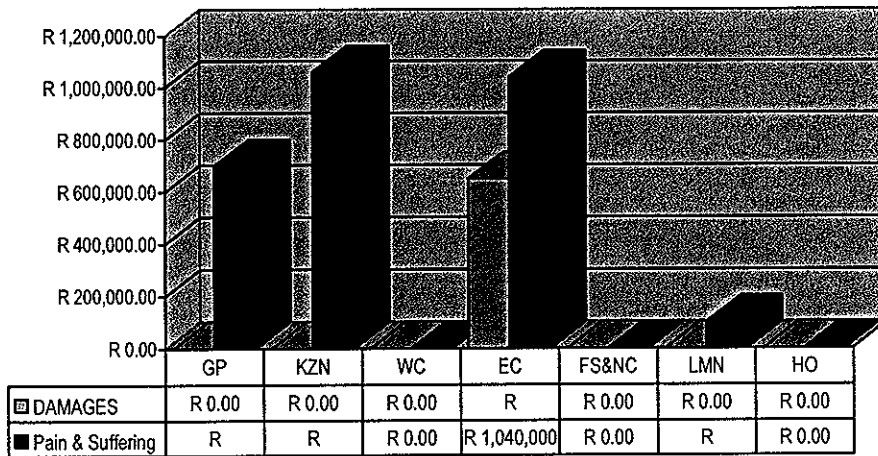
3.5.3 Motor Accident per region: April 2010 to March 2011

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3.5.5 Damage to property and Defamation, Procumbent Irregularities, injury to offenders and injury on duty per region: April 2009 to March 2010



3.5.6 Pain and Suffering: April 2010 to March 2011



3.6 Concluding Remarks on Claims

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- (a) Motor vehicle accidents were the highest in LMN.
- (b) Assaults were the highest in Eastern Cape.
- (c) A medical treatment claim was registered in the Eastern Cape Region.
- (d) The overall impression one gets is that, the trends are not clear yet, during this period. The reason for this is that cases are being handled by the Courts and they are not finalised. A large volume has not gone beyond a letter of demand stage.

4. ARBITRATIONS

- 4.1 For period April 2010 to March 2011 a total of 471 arbitration cases were registered by Directorate Legal Services.

- Total cases received by respective regions are as follows:

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EC- 66

FS&NC-31

GP- 40

HO- 224

KZN- 103

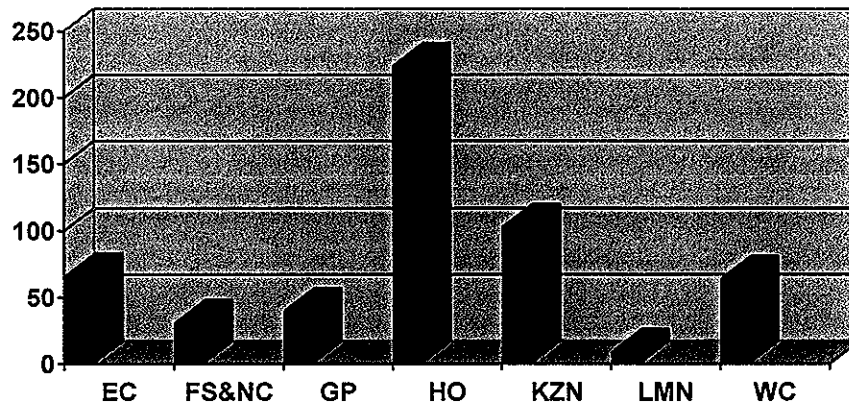
LMN-09

WC-64

TOTAL = 471

- 4.1.1. The graph below indicates the number of arbitration cases received per region:

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5. RECOMMENDATIONS TO REDUCE ARBITRATION LITIGATION

5.1 In addition, the new recommendations are the following:

- (a) All funded vacant, legal posts in the Regional Offices and Management Areas should be filled in order to increase legal capacity in the Regions.
- (b) The non-submission of litigation data by some officials should be addressed urgently. In the Gauteng Region, no data on arbitration was submitted until the drafting of this report. Failure to submit, accurate litigation data is a sign of non-compliance. Other Regions other than LMN and Gauteng submit their litigation data on time. The co-

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operation of the Regional offices that do not submit the data on time should be requested.

- (c) Human Resource matters, which include remuneration, promotion, job grading and assessments must receive high priority in order to reduce the number of arbitration cases.
- (d) Consideration of offenders for placement on parole must be managed in such a way that there is no need for the offender to approach the Courts for relief.
- (e) Management reports should address all claims relating to motor vehicles and other losses.
- (f) All DCS employees who cause unnecessary litigation should pay the legal costs incurred and/ or amounts paid by the DCS if they have forfeited state cover.

- ✓ A possible strategy to prevent the arbitration/litigation will be to properly train managers and supervisors to discipline their sub-ordinates in accordance with the prescribed Disciplinary Code and Procedure, taking into account reasonableness and fairness.
- ✓ Strategy to curve this type of litigation can be to sensitize personnel officials working with personnel related matters to make sure that they comply with the prescriptions in a reasonable and fair manner.
- ✓ In order to reduce number of reinstatements, officials with legal background and or experience to be utilised for chairing dismissible transgressions. This will minimise procedural flaws during hearings and error in substantive ness.

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- ✓ To illustrate other concerns the Free State/Northern Cape and LMN regions reported that:
 - Managers have to deal with grievances timorously in order to avoid arbitrations.
 - Where there is a delay in resolving grievances or dispute, aggrieved official should be informed and updated on the progress made in order to avoid matters being taken for arbitration even when it is not necessary.
 - A dismissal sanction should be arrived at after careful considerations of all facts and circumstances of each case.

For: NATIONAL COMMISSIONER

